Remarks:

Applicant has carefully studied the final Examiner's Action mailed 01/27/2005, having a shortened statutory period for response set to expire 04/27/2005, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings and numbered paragraphs that correspond to the centered headings and paragraph numbering employed by the Office, to ensure full response on the merits to each finding of the Office.

Response to Arguments

1. Applicant thanks the Office for fully considering the arguments filed 11/22/3004.

The Office points to col. 24, lines 37-45 of Sneeringer where it is said:

> ...Vantera technology which permits the cost-effective access, monitoring, display, and where necessary, control of virtually any information signal a customer needs to optimize operations."

The quoted material actually appears in said column at lines 46-49. The "control" referred to is merely the customer's ability to place a monitor on any item of equipment and to arrange for the sounding of an alarm or other signal if energy usage or some other monitored factor exceeds a predetermined threshold. Specifically, as explained in col. 12 of Sneeringer, lines 14-19:

> That is, the Vantera-type node, in addition to collecting the information, can, for example, send control signals. By way of illustration, the Vantera-type node or other intelligent node may include a predetermined value that indicates "above some level, take some action," for example, send a signal.

Thus it is understood that the control signal of which Sneeringer speaks is a signal from a monitored piece of equipment that is generated when power or some other utility consumption exceeds a predetermined threshold. It is not a control signal generated by a user nor is it a control signal selected by a user from a group of control signals provided by the supplier of the monitored utility, nor is it a control signal that travels from the user to the supplier of the utility that has the capability of changing the provider of the utility from one provider to another.

The Office further contends that col. 12, lines 12-24 teaches:

> the Vantera-type node, in addition to collecting the information, can, for example, send control signals.

However, as already noted, such control signals are not generated by the end-user, are not selected by the end-user from among a plurality of responses provided by the supplier of power, and said control signals cannot select a particular utility provider from among a plurality of utility providers.

Claim Rejections – 35 USC § 103

1. (second occurrence) Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

2. Claims 1-4, and 6-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sneeringer in view of Crooks. Reconsideration and withdrawal of this ground of rejection is requested for the following reasons.

The Office contends that Sneeringer, which incorporates Vantera® technology, enables user control of a utility from within the premises of the user. For the convenience of the Office, a copy of the article found at http://www.manufacturing.net/ctl/article/CA189391 is enclosed herewith. As the article explains:

> HP Vantera provides large end-user companies the ability to see precisely when and where they use electricity, allowing them the opportunity to shift usage to more cost-effective times or more efficient equipment.

The article further explains that companies that do not have Vantera technology "...do not have real-time access to energy usage data." The article concludes:

> HP Vantera can play a significant role in the integration between meters and sensors to enterprise information systems thus enabling real-time energy consumption management.

Vantera technology has utility in providing status reports and improving efficiency in large companies. More particularly, Vantera technology performs automated responses, such as shifting electricity usage to different piece of equipment when a threshold value is reached. Significantly, this does not include user input. It follows that it does not include user input in the form of selecting a response to information provided by a utility provider.

It is critical to appreciate the fact that the Vantera system is entirely passive in its operation. The end-user places sensors on pieces of equipment to be monitored and then performs the monitoring operation during equipment operation. Over time, the end-user learns

which pieces of equipment are energy hogs so that said pieces can be replaced with more efficient equipment. Moreover, over time the end-user learns that money can be saved by operating certain pieces of equipment at certain times of day when loads and prices are down.

Moreover, in an area served by a plurality of utility providers, the utility providers may compete with one another by delivering messages to the user over the display means and the user may switch from one utility provider to another by responding to information from the utility providers. The response is electronic, *i.e.*, without delay, so to observe that the customer has instantaneous control is to merely point out an inherent feature of the invention.

A customer using the Vantera technology, although still receiving one bill for electricity at the end of a month, which bill includes all electrical consumption by all pieces of equipment, the customer can at least monitor energy consumption on a real-time basis for individual pieces of equipment so that when the bill is received, the customer will know which items of equipment contributed the most to such bill.

The Vantera technology provides a powerful tool for those end-users who want to know what time of day is the best time of day to operate equipment and which items of equipment are consuming more energy than other items.

It is important to appreciate that the Vantera technology is entirely automated. There is no user input into a Vantera system. Vantera technology enables a user to passively monitor energy consumption in real time and at multiple locations within the user's facility, without providing any means for the user to immediately change the operation of the system. Again, all the user can do is identify equipment that consumes excess energy, replace that equipment, and operate equipment during the times of day, if any, when power charges are reduced. This is a far cry from Applicant's much more robust system.

According to Sneeringer, Vantera technology monitors a utility, provides information to a user, and allows control of a utility by sending control signals in response to a predetermined value (col. 12, lines 12-24). However, such control is not performed by the user. Nor is such control performed by a user selecting a response to information. Both of Applicant's independent claims, as currently amended, clearly recite that Applicant's system includes control that is performed by a user by selecting a response to information supplied by utility suppliers. No such user control is included in Vantera technology.

It should be appreciated that Vantera merely arms the end-user with information. It is then up to the end-user to go into the marketplace and purchase equipment that uses less power than the energy hogs identified by the Vantera technology. It is also up to the end user to determine what time of day that electricity charges are lowered and to operate its equipment during such off-peak times.

With this background, it can be appreciated that the Office errs in contending that Sneeringer discloses "means for transmitting information between the utility provider and the premises of the customer or user via a supplied monitor, home computer, television or any other display and said customer or user is capable of responding via a keyboard or other selection means to enable the customer or user to select a response to the information received and controls the provision and/or usage of said utility from the premises of the user."

The customer PC with a modem depicted in Fig. 3 of Sneeringer is merely a passive monitor that displays, for each piece of monitored equipment, real-time energy consumption information so that the customer may decide to purchase more efficient equipment or to operate certain pieces of equipment at particular times of the day or week.

Neither Sneeringer nor the Vantera technology teach or suggest Applicant's invention of a system where the utility provider prepares reports for the benefit of the user end-user, based upon information received by the utility provider from the user, and places such reports in the premises of the user in real time in the form of a plurality of choices or options from which the customer may select, each of which can effect an immediate change in the utility bill.

The Office refers to Fig. 4 and quotes col. 24, lines 37-45 of Sneeringer where it is said:

> ...Vantera technology which permits the cost-effective access, monitoring, display, and where necessary, control of virtually any information signal a customer needs to optimize operations.

The quoted material actually appears in said column at lines 46-49. The "control" referred to is merely the customer's ability to place a monitor on any item of equipment and to arrange for the sounding of an alarm or other signal if energy usage exceeds a predetermined threshold. Specifically, as explained in col. 12 of Sneeringer, lines 14-19:

> That is, the Vantera-type node, in addition to collecting the information, can, for example, send control signals. By way of illustration, the Vantera-type node or other intelligent node may include a predetermined value that indicates "above some level, take some action," for example, send a signal.

Thus it is understood that the control signal of which Sneeringer speaks is just a signal from a monitored piece of equipment that is generated when power or some other monitored factor consumption exceeds a predetermined threshold, or the like. It is not a control signal generated by a user nor is it a control signal selected by a user from a group of control signals provided by the utility provider, nor is it a control signal that travels from the user to the utility provider and that has the capability of substituting one utility provider for another.

In the Vantera system, a user having multiple pieces of power-consuming equipment may place a monitor on each piece of equipment and monitor its energy usage in real time. The monitor, as aforesaid, is a passive device that merely provides information. The utility provider provides no options among which the user may select. Accordingly, the Office's assertion that: "It would have been obvious to person of ordinary skill in the art at the time the invention was made for the customer or user to select a response to the information received and control the provision and/or usage of said utility from the premises of the user." is not supported by any combination of Sneeringer and Crooks.

The Office adds that Sneeringer does not specifically teach about the type of equipment at the user's location, but does teach about the utilization of a customer PC. As Applicant has already pointed out, the customer PC disclosed by Sneeringer is a passive device.

The Office cites U. S. patent No. 6,088,688 to Crooks to support the proposition that "... it is known in the art to provide a supplied monitor, home computer, television or any other display and said customer or user is capable of responding via a keyboard or other selection means to allow the customer or user to select a response to the information received."

However, the Crooks system merely enables a user to provide a response to a request from a utility provider to select the format of a monitoring report. Accordingly, the response to the user's request is merely the provision of information. Even after the user has placed an order for a report in a format selected by the user, the user can go no further. Upon receiving the report in the selected format, no means whatsoever are provided for the user to instantaneously order a change in service or to communicate with the utility provider in any way.

This is the critical aspect of Applicant's invention: Upon receiving a report from a utility provider, complete with options, a user, remaining in the premises of the user, may select from among those options and thereby engage in a real time dialog with the utility provider and

thereby effect instantaneous changes in the service provided or even to the provider of the services.

An obvious combination of Sneeringer and Crooks would produce the Sneeringer system with the added feature of enabling the end-user to choose the format of the passive information reports that appear on the screen of the end-user's PC. Nothing in Crooks would have impelled one of ordinary skill to further improve Sneeringer by enabling the utility provider to send reports to the customer, including options based upon information received from the customer, and enabling the end-user to send control signals to the utility provider by selecting an option from a plurality of utility provider-provided options to accomplish instantaneous re-configuration of the customer's utility consumption system.

Thus, neither Sneeringer nor Crooks enable a user to engage in a two-way real time conversation with a utility provider from within the premises of the user. For example, neither of said references, considered individually or together as a whole in combination with one another, enable a user to control central heating by the user making a choice based on the monitoring data provided by the utility.

This important feature of Applicant's invention is recited with particularity in independent claim 1, as currently amended.

As per claim 2, the Office contends that Sneeringer discloses a system where a utility provider provides information to an end-user that relates to the metering of the consumption of a utility or utilities. Claim 2 is allowable over Sneeringer, however, because said claim 2 depends from claim 1, currently amended. Sneeringer neither teaches nor discloses a system where a user sends control signals to a utility provider.

As per claim 3, the Office contends that Sneeringer discloses a selection means including a series of buttons enabling the end-user to execute commands and responses to information supplied by the utility provider. No such disclosure appears in Sneeringer nor does Sneeringer suggest such a system.

As per claim 4, the Office contends that Sneeringer discloses a system wherein a user obtains entry to a system by the introduction of a coded input. No such disclosure appears in Sneeringer nor does Sneeringer suggest such a system.

As per claim 5, the Office contends that Sneeringer discloses a system wherein a user can selectively operate control means for the controlled utility within the premises. In the Sneereinger system, the user has no control whatsoever over the utility provider.

As per claim 6, the Office contends that Sneeringer discloses a display provided as part of the utility's consumption metering apparatus in the premises. Applicant relies upon the dependency of claim 6 from claim 1 to support the allowance of said claim 6. The Sneeringer display is a passive display means lacking the ability to send signals from the customer to the utility provider.

As per claim 7, the Office contends that Sneeringer discloses information transmitted from the user to the utility that includes data relating to metering of the use of at least one utility in the premises. However, Sneeringer neither teaches nor suggests a system that enables a user to transmit information from the premises to the utility.

As per claim 8, the Office contends that Sneeringer discloses the claimed invention with the exception that information is not accessible to the user who can send a command or selection to one of a range of utility providers to receive a utility from a selected utility provider on the basis of information received from the utility provider. The Office further contends that Sneeringer discloses the concept of a user having direct access to generators and picking one that meets the user's preferences. However, the "picking" is performed by making a telephone call, writing a letter, completing a utility provider's forms, or by employing other conventional communication techniques. Thus, relatively large amounts of time and effort are required for each change of service. Applicant's system enables a user to change from one utility provider to another in an instant, and to make multiple changes in a single day if desired. Applicant's system is a two-way street where electronic information may flow in both directions between the utility provider and the user. No reference of record teaches or suggests such a two-way street.

The Office next contends that Crooks teaches, at col. 11, lines 1-10, that it is known that a user may send a command or selection to one of a plurality of utility providers to receive a utility from a selected provider. However, Crooks, like Sneeringer, includes no means whatsoever for sending such a command from the user's premises and therefore includes no means for sending such a command based upon information provided by the utility provider. The Crooks system is a management tool that enables managers of companies having multiple sites served by multiple utility providers to make decisions concerning utility purchases. The system

analyzes the data and reports it in a form that facilitates management decisions. However, when a decision is made to cut utility costs by purchasing more efficient equipment or switching to a different utility provider, the decision is implemented not instantaneously from the user's premises but in a conventional way requiring relatively long periods of time to implement.

Applicant's invention enables a user to instantaneously make changes in utility consumption. There is no need to contact a utility provider through the mail, over a phone, or by email. A signal requesting a change in service is sent from the user's premises and the change occurs immediately because the signal is a control signal. No reference of record provides to an end user such control over a utility provider and no reference of record teaches or suggests that such control could or should be granted.

As per claim 9, the Office contends that Sneeringer discloses a system for metering the use of a plurality of utilities in a premises in which the system allows the reading and logging of information from all, or a combination of metering apparatus in the premises so as to provide a record of utility usage in any given time period, as utility usage profile, and said information is accessible by the user via a monitor, home computer, television or other display means, communication means to allow said user to selectively transmit the data via the communications means and receive communications from the utility providers and wherein at least some of the information from the utility provider is generated by the utility provider on the basis of the utility usage profiles transmitted by the user to the utility provider.

However, Sneeringer neither teaches nor suggests a communication means that enables a user to selectively transmit data via a communications means to one or more utility providers and receive communications from one or more utility providers based upon information from the one or more utility providers generated by the one or more utility providers on the basis of the utility usage profiles transmitted by the user to the one or more utility providers. That is Applicant's invention, not Sneeringer's.

Claim 9 stands rejected under 35 U.S.C. 103 as being unpatentable over Sneeringer on the grounds that Sneeringer teaches all of the elements of claim 9 with the exception of the step of a user sending a command or selection to one of a plurality of utility providers to select said one utility provider to provide the utility to the user. Crooks certainly does not supply the missing step. Therefore, the Office takes Official Notice that:

> sending a command or a selection to one of a range of utility providers to designate to receive the said utility from a selected utility provider is old and well known in the deregulation system involving utilities. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the step of send a command or selection to one of a range of utility providers to designate to receive the said utility from a selected utility provider because the skilled artisan would have recognized this business practice of sending a command or selection to one of a range of utility providers to designate to receive the said utility from a selected utility provider and is clearly applicable to the computer assisted monitoring and client accessibility to utilities. These advantages are well known to those skilled in the art.

However, the practice of which the Office takes Official Notice is the conventional practice of using the mail, the telephone system, the Internet, or other conventional communication channels to contact a first utility provider to request, for example, discontinuation of service (or changing to a different billing rate, and the like) and a second utility provider to commence utility service, coupled with instructions to each utility provider as to the time and date of the change in service so as not to cause any interruption in said service. Applicant has not attempted to claim the idea of dropping one utility provider in favor of another, or switching from one billing scheme to another, nor has Applicant attempted to claim the conventional communication channels for communicating requests for service discontinuation or start-up, or other such changes in service.

Independent claim 9, as currently amended, recites that the current invention is provided for the customer's benefit and is controlled by the customer. It enables the customer to communicate with one or a plurality of customer-selected utility providers. Sneeringer merely illustrates a customer PC. As already pointed out, that PC is a passive device that enables a customer to see utility charges in real time as a result of utility-consumption monitors placed on preselected items of equipment. No disclosure is made of any means enabling a customer to control the provision of utilities from the premises of the user as recited in claim 1, currently amended.

As per claim 10, Applicant agrees that Sneeringer teaches the monitoring of various utilities to determine the amount of such utilities used by a customer. However, Sneeringer provides no system whereby a user sitting within in his or her premises may send commands to one or more utility providers over the monitoring system itself. Again, Sneeringer requires a

consumer to communicate with one or more utility providers by conventional communication methods outside the scope of the Sneeringer monitoring system.

As per claim 11, the Office contends that Sneeringer discloses that various utilities provided by a supplier of utilities and which can be charged on a timed basis may be monitored. Applicant does not traverse that finding of the Office. However, it is important to observe that such teaching is the entire teaching of Sneeringer. Applicant improves upon a system for monitoring utilities and adds communication means in the premises of the user that enables the user to interact with the utility provider in real time, selecting from a number of options provided by the utility provider. That improvement is neither taught nor suggested by Sneeringer, nor is it taught or suggested by Crooks or by facts in the public domain susceptible to Official Notice.

As per claim 12, the Office makes reference to Fig. 9 of Sneeringer and contends that Sneeringer discloses the generation of a profile of usage for each utility to allow subsequent setting of utility usage and supply generation by the Sneeringer system of at least one profile of usage of each utility to allow subsequent setting of utility usage. However, that is as far as Sneeringer goes; there are no means in the Sneering system for the user to act immediately when such a user profile is supplied by the utility provider. Only Applicant enables a customer to send control signals to a utility provider in response to information provided by the utility provider.

As per claim 13, the Office contends that Sneeringer discloses the allocation of utility usage data to the usage of apparatus in the premises. Again, that is as far as Sneeringer goes and claim 13 is in condition for allowance because it depends from allowable independent claim 9.

As per claim 14, the Office contends that Sneeringer discloses allocation of specified apparatus within the premises of usage of a plurality of utilities over a time period. That is the extent of Sneeringer and claim 14 is in condition for allowance because it depends from allowable independent claim 9.

As per claim 16, the Office contends that Sneeringer discloses that information received by the apparatus is provided by the utility provider to the user and relates to the utility usage profile information previously transmitted by the utility provider to the user. Yes, but Sneeringer does not provide the control signal capability taught by Applicant and claimed in claim 9 from which claim 16 depends.

Applicant thanks the Office for providing particular columns and line numbers in the references as applied to the claims for the convenience of Applicant. Applicant acknowledges

that the Office's citations are not exhaustive of all of the teachings of the references and this amendment has been prepared based upon the references as a whole and not on just the specifically quoted parts of said references.

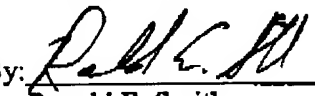
No combination of Sneeringer and Crooks teaches or suggests a system for monitoring utilities, providing a monitoring report to a user, and enabling a user to send control signals to the utility provider, thereby interacting with the utility over the same monitoring system. Both Sneeringer and Crooks enable the monitoring or utilities and Crooks adds the feature of enabling a customer to select the format of a report, but neither of said references teach or suggest the system recited in Applicant's independent claims 1 and 9.

Conclusion

3. Applicant has deleted disjunctive terms from all claims to place them into allowable form. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

By: 

Dated: April 26, 2005

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CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8(a))

I HEREBY CERTIFY that this Amendment AF, including Introductory Comments, Amendments to the Claims, Remarks, and Request for Continued Examination, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3621, Attn: Mr. Daniel L. Greene, (703) 872-9306 on April 26, 2005.

Dated: April 26, 2005

Deborah Preza